

App. No. 10/632,529  
Amendment Dated: January 18, 2007  
Reply to Office Action of October 18, 2006

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### REMARKS/ARGUMENTS

The Office Action mailed October 18, 2006 has been received and the Examiner's comments carefully reviewed. The claims have been amended as set forth above to clarify features of the claims. No new matter has been added. Applicants respectfully request reconsideration of the claims.

#### **I. Examiner Interview**

An interview was held on December 14, 2006. The status of the claims in view of the prior art was discussed. An agreement as to allowability was not reached. However, applicants believe that an agreement was reached that the current amendments move prosecution forward over the cited references.

#### **II. Claim Objections**

Claim 16 is objected to because of dependency informalities. The dependency of claim 16 has been amended as set forth above. Applicants request withdrawal of the rejection.

#### **III. Rejections Under 35 U.S.C. 101**

Claims 10-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. With respect to claims 17-24, applicants have amended the claims to recite a "computer-readable storage medium." Applicants believe that claims 17-24 are not allowable under 35 U.S.C. 101. With respect to claims 10-16, applicants respectfully disagree with the rejection. Independent claim 10 is a device claim. The device includes a processor, a display, and a memory. The memory has a plurality of computer-executable instructions loaded thereon. Applicants are not aware of any precedent stating that such a device is now statutory. The claim cannot be reasonably interpreted to be a carrier wave in that the claim recites a mobile device having a processor, a display, and a memory. Accordingly, applicants respectfully request reconsideration with regard to claims 10-16.

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#### IV. Rejections Under 35 U.S.C. 102(e)

Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Brosnan et al. (U.S. Patent No. 6,682,423) (hereinafter "Brosnan"). Applicants respectfully disagree with the rejection. Independent claim 1 includes the following combination of features not taught or otherwise suggested by the cited reference:

initiating a gaming session between a first mobile device and a second mobile device for communicating data;

providing a first transport configured to communicate the data, wherein the first transport has a first transport protocol;

providing a second transport configured to communicate the data, wherein the second transport has a second transport protocol;

determining whether the first transport protocol corresponds to an optimal transport protocol for transmitting the data set;

switching the first transport protocol to the second transport protocol when a determination is made that the second transport protocol is the optimal transport protocol;

transmitting the data according to the first transport protocol when the first transport protocol corresponds to the optimal transport protocol; and

transmitting the data according to the second transport protocol when the second transport protocol corresponds to the optimal transport protocol.

Applicants assert that Brosnan does not teach or otherwise suggest the above features. Independent claim 1 recites "data." Independent claim 1 also recites "the data." Throughout claim 1 the "data" is referring to the same data. Not only does claim 1 recite that the first transport is configured to communicate the data, but claim 1 also recites that the second transport is configured to communicate the data. Claim 1 recites switching the first transport protocol and the second transport protocol. Both the first transport protocol and the second transport protocol are configured to communicate the data.

Brosnan teaches a very different invention. Brosnan teaches communication interfaces 52. Each of the servers 71-74 provide a separate gaming service for gaming machines 2 across

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network 60. Each service provided by servers 71-74 transmits data according to a proprietary communication protocol and proprietary hardware. Brosnan continues by teaching as follows:

Each type of server 71-74 may thus utilize a different proprietary communication protocol, remote computer, proprietary network hardware and proprietary connection scheme to communicate game information within network 50. A communication interface 52 for each server is then responsible for providing data transmission services for each server 71-74 onto the common protocol and hardware used on network 60. *Brosnan*, at col. 6, lines 54-61.

Stated another way, Brosnan is specifically teaching that each of the communication protocols is unique. For example, in Brosnan, a transport configured to transmit the accounting service data could not send data associated with a player tracking transport configured to send player tracking data. *See Brosnan*, at col. 6, lines 37-61. The portion cited in the Office Action does not teach otherwise. The portion of Brosnan in the Office Action recites as follows:

After the data is received, it may then be converting the data from the network communication protocol to one of the first and second communication protocols (612). The data is then transmitted from the communication interface to the gaming machine in the one of the first and second non-network communication protocols (614). After the data is received by the gaming machine, the gaming machine may load or otherwise use the data downloaded from the communication interface. *Brosnan*, at col. 22, lines 50-58.

Here, Brosnan is not teaching switching as recited in independent claim 1. Also, Brosnan is not teaching that either communication protocol can be used. Brosnan is teaching that the communication protocol used depends on what data is received. This interpretation is the only one that makes sense in that Brosnan teaches throughout the application that each of the communication protocols are proprietary. Accordingly, Brosnan does not teach "providing a first transport configured to communicate the data, wherein the first transport has a first transport protocol" and "providing a second transport configured to communicate the data, wherein the second transport has a second transport protocol. Moreover, applications can no teaching of "switching the first transport protocol to the second transport protocol when a determination is made that the second transport protocol is the optimal transport protocol." Given the above proprietary teaching in Brosnan, Brosnan cannot possibly teach "transmitting the data according to the first transport protocol when the first transport protocol corresponds to

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the optimal transport protocol" and "transmitting the data according to the second transport protocol when the second transport protocol corresponds to the optimal transport protocol." Accordingly, applicants believe that independent claim 1 is allowable.

Independent claim 10 includes the following combination of features not taught or otherwise suggested by the cited reference:

initiating a gaming session between a first mobile device and a second mobile device for communicating data that is associated with a game application;

providing a first transport configured to communicate the data, wherein the first transport has a first transport protocol;

providing a second transport configured to communicate the data, wherein the second transport has a second transport protocol;

determining whether the first transport protocol corresponds to an optimal transport protocol for transmitting the data set;

switching the first transport protocol to the second transport protocol when a determination is made that the second transport protocol is the optimal transport protocol;

transmitting the data according to the first transport protocol when the first transport protocol corresponds to the optimal transport protocol; and

transmitting the data according to the second transport protocol when the second transport protocol corresponds to the optimal transport protocol, such that a switch between the first protocol and the second protocol is transparent to the user and the game application.

Applicants assert that Brosnan does not teach or otherwise suggest the above features. Brosnan teaches communication interfaces 52. Each of the servers 71-74 provide a separate gaming service for gaming machines 2 across network 60. Accordingly, Brosnan does not teach "providing a first transport configured to communicate the data, wherein the first transport has a first transport protocol" and "providing a second transport configured to communicate the data, wherein the second transport has a second transport protocol. Moreover, applications can no teaching of "switching the first transport protocol to the second transport protocol when a determination is made that the second transport protocol is the optimal transport protocol." Given the above proprietary teaching in Brosnan, Brosnan cannot possibly teach "transmitting

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the data according to the first transport protocol when the first transport protocol corresponds to the optimal transport protocol" and "transmitting the data according to the second transport protocol when the second transport protocol corresponds to the optimal transport protocol." Accordingly, applicants believe that independent claim 10 is allowable.

Independent claim 17 includes the following combination of features not taught or otherwise suggested by the cited reference:

initiating a gaming session between a host mobile device and at least one receiving mobile device according to a first transport protocol, wherein address information and game information is transmitted from the host mobile device to at least one receiving mobile device;

providing a first transport configured to communicate data, wherein the first transport has a first transport protocol;

providing a second transport configured to communicate the data, wherein the second transport has a second transport protocol;

determining whether the first transport protocol corresponds to an optimal transport protocol for transmitting the data set from the host mobile device to at least one receiving mobile device, wherein the data set is related to a game application;

switching the first transport protocol to the second transport protocol when a determination is made that the second transport protocol is the optimal transport protocol;

transmitting the data related to the game application according to the first transport protocol when the first transport protocol corresponds to the optimal transport protocol;

transmitting the data according to the second transport protocol when the second transport protocol corresponds to the optimal transport protocol; and

Applicants assert that Brosnan does not teach or otherwise suggest the above features. Brosnan teaches communication interfaces 52. Each of the servers 71-74 provide a separate gaming service for gaming machines 2 across network 60. Accordingly, Brosnan does not teach "providing a first transport configured to communicate the data, wherein the first transport has a first transport protocol" and "providing a second transport configured to communicate the data, wherein the second transport has a second transport protocol. Moreover, applications can no

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teaching of "switching the first transport protocol to the second transport protocol when a determination is made that the second transport protocol is the optimal transport protocol."

Given the above proprietary teaching in Brosnan, Brosnan cannot possibly teach "transmitting the data according to the first transport protocol when the first transport protocol corresponds to the optimal transport protocol" and "transmitting the data according to the second transport protocol when the second transport protocol corresponds to the optimal transport protocol." Accordingly, applicants believe that independent claim 17 is allowable.

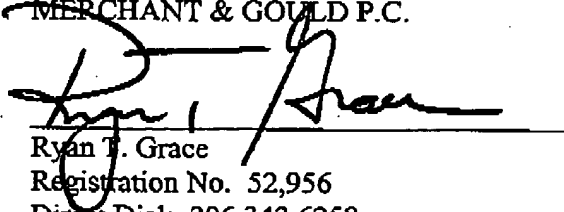
With regard to the dependent claims, those claims include features not taught or suggested by the cited references. Also, the dependent claims ultimately depend from independent claims 1, 10 and 17, respectively. As such, they are thought allowable for at least the same reasons set forth above.

V. Request For Reconsideration

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

Respectfully submitted,

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